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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,489	10/24/2003	John Michael Harper	ACE-19515	7229

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,489

Applicant(s)

HARPER, JOHN MICHAEL

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 8 and 10 is/are rejected.
- 7) ☒ Claim(s) 4-6, 9 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Specification

The disclosure is objected to because on page 7, reference is made to Figure 7, yet the drawings contain Figures 7a-7g, as part of Figure 7. *Accordingly*, it is suggested that Figures 7a-7g be referenced in the "Brief Description of the Drawings" on page 7.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected since it is unclear from the language of the preamble if it is applicant's intent to claim the subject matter recited therein lines 1-3, i.e., it is unclear whether applicant intended the claim to be a Jepson claim, and thus the metes and bounds of the claim cannot be properly ascertained. *Accordingly*, if applicant intends to claim the subject matter set forth therein, applicant should add the language --the improvement comprising to the claim. At this time, since it is unclear what applicant's intension is, the claims have been examined as though only the *combination* is being claimed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,228,581 (Palladino et al. '581).

Palladino et al. '581 disclose a system comprising a shelf (10) mounted to standards (of a refrigerator); a shelf overlay comprising a rigid planar portion (12w) bounded by a front edge, a rear edge and opposite side edges; a lip (at 24 - see Figure 3), orthogonal to the planar portion (12) is mounted to the front edge and the lip (24) extends downwardly (at 38) from the planar portion (12) so as substantially cover a front edge surface of the shelf and the lip (24) also extending upwardly (at 26) from the planar portion (12); and mounting means (at 36) for mounting the planar portion (12) to the shelf (10).

Claims 1, 2, 7, 8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,573,322 (Wrobel '322).

Wrobel '322 discloses a system comprising a shelf (48) mounted to a pair of parallel standards (12, 14); a shelf overlay comprising a rigid planar portion (50a) bounded by a front edge, a rear edge and opposite side edges; a planar lip (50b - which is planar at 62), orthogonal to the planar portion (50a) is mounted to the front edge and the lip (50b) extends downwardly (between 56 and 53) from the planar portion (50a) so as substantially cover a front edge surface of the shelf and the lip (50b) also extending upwardly (see right side of Figure 3) from the planar

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portion (50a); and mounting means (at 56 and 58), defining adhesive (56) and a mechanical fastener (58), for mounting the planar portion (50a) to the shelf (48).

Claims 1, 3, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,713,949 (Wilcox '949).

Wilcox '949 discloses a system comprising a shelf (22b) mounted to standards (34b to each end of 24b); a shelf overlay comprising a rigid planar portion (22a) bounded by a front edge, a rear edge and opposite side edges; a planar lip (at 55a - see right side of Figure 3), orthogonal to the planar portion (22a) is mounted to the front edge and the lip (55a) extends downwardly (see right side of Figure 3) from the planar portion (22a) so as substantially cover a front edge surface of the shelf and the lip (55a) also extending upwardly (see right side of Figure 3) from the planar portion (22a); and mounting means (at 38/40), defining a mechanical fastener, for mounting the planar portion (22a) to the shelf (22b).

Allowable Subject Matter

Claims 4-6; 9; and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

July 19, 2005